

**GENERAL PROCUREMENT, ORDERING AND CONTRACTING CONDITIONS**  
**N.V. KONINKLIJKE PORCELEYNE FLES**

**A. GENERAL CONDITIONS**

These general conditions are applicable on all legal relations between N.V. Koninklijke Porceleyne Fles and affiliated companies and the Contractor.

**1. Definitions**

1.1. In these General Terms and Conditions ("Conditions"), the following is understood under:

- Services:** All work (in any form and name, e.g. Services, contracting of work, outsourcing, etc.) that the Contractor performs for or on behalf of the Client, whether or not in connection with supply/delivery of Products;
- Defect:** Any deviation from the Products or Services of the Specification and any otherwise inadequate functioning of the Products or any other incorrectly executed Service;
- Client:** N.V. Koninklijke Porceleyne Fles, or an Associated Company, depending on which party proceeds with the conclusion of the Agreement;
- Contractor:** Any natural or legal entity from whom the Client orders Products and/or Services and/or with whom it enters into discussions or negotiations on the conclusion of an Agreement;
- Order:** Every contract awarded by the Client to the Contractor for the supply of Products and/or the provision of Services, in any form at all;
- Agreement:** Any agreement entered into between Client and the Contractor, any amendment or addition to it, as well as all (legal) acts in preparation for and/or for its implementation.
- Products:** All goods supplied or to be supplied to the Client in the execution of an Order, regardless of whether the Order entails only the supply of those goods or (partly) include the provision of Services;
- Specification:** The description of Products or Services ordered by the Client, which is listed or which is referred to in the Order or the Agreement. Failing that, the description which is generally used between the Parties, or failing that, which is usual in the industry in general, shall apply;
- **Affiliated Company(Companies):** Means any group company as referred to in article 2:24b CC
- **Work:** The work to be performed by the Contractor.

**2. Applicability and annulability**

2.1. These Conditions form part of all offers of the Client and all Agreements, also when, in successive Agreements, reference is not expressly made of the applicability thereof.

2.2 Except where, in view of the nature of the agreed or to be agreed performance, other General Terms and Conditions of the Client shall apply (such as the General Conditions of Sale and Supply), these Conditions form part of all Agreements and these Conditions shall apply to all (other) acts and legal acts between the Client and the Contractor, even if those (legal) acts may not lead to, or are not related to an Agreement.

2.2. The applicability of any General Terms and Conditions of the Contractor is expressly rejected by the Client.

2.3. Provisions in these Conditions do not apply to the extent that they are inconsistent with applicable provisions of imperative law. If any provision of these Conditions should become null and void or otherwise unenforceable, then that shall not affect the validity of the remaining provisions in these Conditions and the Agreement.

**3. Order and acceptance**

3.1. All Client Orders are non-binding. As far as the Contractor accepts a binding offer of the Client - by way of derogation from the stipulation in the first sentence of this paragraph - with minor deviations, those derogations do not form part of the Agreement and the Agreement shall be realised in accordance with the Client's offer.

3.2. The Client has the right to dissolve the Agreement in a written declaration to this effect to the Contractor, without being held to pay any compensation, provided that is done within 2 business days after receipt of the acceptance by the Contractor of the Client's Order.

3.3. If the Client sends the Contractor an order form, the Contractor shall return this for approval, signed, within 7 working days after the date of receipt. If the Client has not received a correctly signed form within 12 business days from the date of signature, the Client shall be entitled to assume that a legally valid agreement did not come to pass.

3.4. Quotations and estimates provided by the Contractor are fixed and binding and cannot be changed before or after the Order, unless they relate to a discount granted (additionally) by the contractor (possibly in the interim).

#### 4. Distribution and agency agreements

- 4.1. If the Client regularly signs Agreements with the Contractor for more than a year for the sale of goods intended for resale and provided that the Contractor knows or should know this, and if the Client performed any substantial form of marketing effort for these goods against which the Contractor had not objected while he was or should have been aware of, a distribution contract of indefinite duration with respect to these matters shall be established between the Parties by operation of law, unless Contractor can prove with legally permitted resources that, no distribution agreement has been concluded, despite the above.
- 4.2. If and to the extent that the Client has been the only de facto reseller in the Netherlands of these goods during the year referred to in paragraph 1, the distribution agreement established in accordance with paragraph 1 (by way of derogation from paragraph 1) is of an exclusive nature and will first of all have a duration of one year, after which the agreement will continue for an indefinite period unless (one of the) parties has denounced this by registered mail, with due observance of a period of three months.
- 4.3. If the Client has regularly established agreements for more than a year between the Contractor and buyers and/or, with the knowledge of the Contractor, to this end, has regularly performed substantial active mediation activities, an agency contract will be established of right between parties for an indefinite period with regard to the goods concerned, unless the Contractor can prove with legally permitted resources that no agency agreement was established, despite the above.
- 4.4. If and to the extent that the Client pursued the agency activities de facto during the year referred to in paragraph 3 as the only agency in the Netherlands, the agency agreement established in accordance with paragraph 3 is of an exclusive nature and will at first (by way of derogation from paragraph 3) have a duration of one year, after which the agreement will continue for an indefinite period, unless (one of the) parties has denounced this by registered mail, with due observance of the legal term.
- 4.5. In case any Agreement as referred to above in this article has been concluded, as well as in the event Parties concluded such an Agreement in another way, the Client shall in case of a termination thereof, other than as a result of a liable shortcoming on its side, be entitled to a reasonable (goodwill or customer) fee.

#### 5. Changes and additions

- 5.1. Amendments and additions to any provision in an Agreement and/or the Conditions can only be agreed to in writing.
- 5.2. When a change and/or supplement as referred to in paragraph 1 is agreed, the change or addition shall only apply to the relevant Agreement.

#### 6. Prices, VAT, payment and set-off

- 6.1. The prices listed in the Order are fixed and expressed in Euro and excluding VAT, unless otherwise stated.
- 6.2. The prices of Products include the standard packing and delivery free of charge and free of import duty. All travel and accommodation costs, as well as all other costs, are always included in the prices of Services. In addition, all the preparatory and other work that is necessary to fulfil the requirements, description and Specification laid down by the Client are included in the prices of all Products and Services.
- 6.3. The Contractor shall indemnify the Client for all costs and damages that may be incurred by the Client as a result of the fact:
  - That the Contractor isn't properly registered for sales tax in any relevant EC Member State; and/or
  - That the Contractor issued incorrect or untimely information to the Client and/or the authorities concerning sales tax in any relevant EC Member State.
- 6.4. Payment shall not be due by the Client any earlier than after full and correct implementation of the Order and acceptance in accordance with article 14. In that case the Client shall pay the invoice within 45 days after receipt.
- 6.5. The Contractor shall not transfer its claims against the Client to any third party, except with the prior written consent of the Client.
- 6.6. The Client is entitled to set off any claim which the Contractor has against it any claim (regardless of which grounds and whether or not due and payable) that the Client may have against the Contractor. If the claims settled by the Client are not yet due, a discount will apply equal to the promissory note discount of de Nederlandsche Bank plus 1% annually over the period from the set-off declaration to the expiry date.
- 6.7. In the event of a delay in the delivery of Products ordered in accordance with the provisions of article 9, payment should be made within the time limit referred to in paragraph 3 after storage of the ordered Products.

6.8. Without prejudice to its further rights, the Client is entitled to charge the Contractor the judicial and extra judicial costs, including legal assistance, reasonably incurred or to be incurred by the Client for collection of any amount due or to obtain fulfilment of any obligation of the Contractor.

## 7. Outsourcing

7.1. The Contractor is obliged to execute the Order itself, unless the Client has expressly consented to outsourcing, subcontracting, or purchase from third parties, or provided written approval to do so.

7.2. The Contractor is fully responsible for any input from third parties in the execution of the Order, as if it concerned its own performance.

7.3. The Contractor shall indemnify the Client against any claims by third parties in the execution of the Order.

## 8. Timely execution

8.1. The agreed time limit, or any further period, considering the provisions of article 9, within which the Order must be carried out, is essential for the Client. The Contractor is in default through the mere exception of deadlines agreed with the Client as to when performances have to be carried out. Any penalty agreed to in this case shall be without prejudice to any obligation of the Contractor towards full compensation.

8.2. The implementation period shall begin on the date on which the Contractor has accepted the Order or, - if that is later - on the date on which the Contractor has access to the information, models, materials or tools which the Contractor absolutely needs, to be provided by the Client according to the Order, of which he has informed the Client in order to start with the execution of the Order.

8.3. In case of a significant exception of an agreed term, not being pursuant to a declaration as referred to in article 9, the Contractor shall be held to immediately refund to the Client any already received (pre) payments or guarantee sums under the relevant agreement, without the Contractor being entitled to set off these amounts against any outstanding or pretended claim by him towards the Client. Furthermore, in that case all personal or commercial guarantees set by the Client or by third parties under the Agreement shall automatically expire. The Contractor is held to dismiss any guarantors from their surety duty and/or claim liabilities towards the Client under the Agreement, or to ensure that they be relieved of their surety duty and/or claim liabilities, this under penalty of forfeiture by the Contractor of an amount equal to the amount to which the guarantor took up surety or to the value of the collateral provided.

## 9. Delayed delivery

9.1. The Client has the right to postpone the delivery of ordered products and/or implementation of services ordered for a maximum period of 60 calendar days, in a written declaration to this effect to the Contractor, unless postponement, considering all the circumstances of the case, would be manifestly unreasonable.

9.2. If the Client should make use of the right referred to in paragraph 1, the Contractor shall store, insure and take any appropriate measure to prevent loss of quality of the Products at a suitable location for the benefit of the Client. The Client is then required to pay the Contractor a reasonable fee to cover the costs of such storage, measures and insurance. Article 16.2 is correspondingly applicable.

## 10. Execution according to Specification; more or less work

10.1 The Contractor is obliged to execute the Order strictly according to the Specification and otherwise in accordance with the requirements of good workmanship.

10.2 The Client has the right to make changes to the Specifications before or during the execution of the Order, or to desire an additional supply of Products and/or expansion of Services after execution of the Order.

10.3 The Contractor declares in advance, as far as he is technically able to, to be prepared to carry out the modified Order referred to in paragraph 2 and/or to supply Products and/or Services under the same conditions.

10.4 If the performance which the Contractor must perform on the basis of the change is demonstrably reduced, it concerns less work, which qualifies for set-off.

10.5 If the obligations which the Contractor must perform under the Agreement as a result of the changes referred to in paragraph 2, are demonstrably extended, this concerns additional work for which the Contractor will receive a fee. Extra work doesn't include additional work which the Contractor could and should have foreseen when he accepted the Order. If the Contractor feels he is entitled to a fee for extra work, he will not begin to execute this before he has submitted a quote regarding the extent of the expected additional work to be performed by him as a result of this change and the associated costs for the Client. The Contractor will not start with the implementation of additional work before he received an order from the Client, expressly and in writing.

10.6 In case of additional work or less work, the date of delivery of the Products or the provision of the Services are re-scheduled in reasonable discussion.

10.7 If no agreement is reached on the price and/or terms for the more and/or less work, that is considered a dispute as referred to in article 22. Pending the decision of such dispute, the Contractor, if the Client so wishes, shall for the time being be held to carry out the Order in accordance with the amended Specification, in which case he shall request a bank guarantee from the Client within two weeks for the difference in price which the Contractor considers to be entitled to and the amount that the Client is willing to pay.

## 11. Quality guarantee

11.1 The Contractor guarantees the soundness of the delivered Products and/or Services rendered by him. This warranty constitutes at least that:

- a. The Products and/or Services are suitable for the purpose for which the Order was placed;
- b. The Products are new, of good quality, and free of errors in design, processing, fabrication, construction and dimensions, as well as free from defects in the materials used and safety (as referred to in art. 6:186 CC) which one may expect of it;
- c. The Products are manufactured according to the latest state of technology;
- d. The Products comply with the Specification and with any samples, models and drawings in terms of quantity, description, quality and performance;
- e. all applicable national and international regulations with respect to the Products, the packaging thereof and/or the Services have been observed promptly;

Moreover, the Products and/or Services comply with the requirements that can reasonably be imposed thereon.

11.2 Ordered Products are in any case considered unsound in the meaning of the previous paragraph, if Defects are incurred within a year after delivery, unless this is the result of normal wear and tear or due to gross error of the Client.

11.3 The foregoing guarantee entails, without limitation of the Client's rights to reimbursement of the costs, damages and interest, that the Defects which arise within one year after delivery are restored by the Contractor free of charge and on Client's first request, immediately and completely, if necessary by replacement of the Products or parts thereof, or by performing the relevant Services again. Unless this is impossible, repairs will always be performed on site.

11.4 After repair of Defects, a new warranty period as defined in paragraph 2 shall commence and the Contractor guarantees the soundness as described in paragraph 1 in respect of the replaced or repaired Products.

11.5 If this is necessary for the safety of persons and/or the progress of the work, the Client shall be entitled to perform provisional repairs to be paid by the Contractor. The Contractor is entitled not to refund the costs claimed by the Client if he can prove that the Client failed to inform him of the relevant Defects in time, and that he, if he would have been informed timely, would have solved the Defects at least as quickly.

## 12. Inspection prior to delivery

12.1 The Client shall at all times have the right to inspect or test the ordered Products before delivery during processing, manufacturing or storage. The Contractor shall allow the Client or the Client's designated expert to do so without any restriction, and offer the necessary facilities and assistance.

12.2 The Client shall notify the Contractor in due time of tests to be performed by the client. The Contractor has the right to attend these tests or to have these attended by a designated expert.

12.3 Regardless of whether or not the Client has made use of its rights under the provisions of the two preceding paragraphs of this article, regardless of what the outcome is of the visits and tests referred to there and no matter what the Client informs the Contractor about that or not, the Contractor itself shall remain fully responsible for the correct execution of the Order.

## 13. Delivery free of charge

13.1 Ordered Products must be delivered free of charge to the destination indicated by the Client. The Contractor is obliged to take care of proper packaging in accordance with all applicable regulations, as well as for security and for proper transport. Deliveries of ordered Products in parts shall not be allowed unless that is mentioned explicitly in the Order.

13.2 Specified documents must be present with each consignment which would include the Client's order number. This order number, as well as any other markings specified by the client, should also be applied, sufficiently clear and visible on the packaging.

13.3 The delivery is entirely at the risk of the Contractor, even if he makes use of the staff of Client in the performance of any delivery (the latter except in the case of intent or gross negligence on the part of the Client or its administrative staff).

#### 14. Inspection and repair

- 14.1 Acceptance has no further significance than that to the judgement of the Client the outward condition of the Products or the visible execution or the outward result of the Services is in compliance with the Order. In particular, acceptance does not preclude a later claim by the Client on non-compliance by the Contractor of his guarantee obligation referred to in article 11 or any other obligation towards the Client.
- 14.2 In the event the Client should reject the Products and/or Services or if subsequently, to the reasonable discretion of the Client, it should appear that they still do not comply with the requirements pursuant to this Agreement and Order, the Client may give the Contractor, without prejudice to its other rights, the opportunity to correct and/or fix the revealed shortcomings and/or Defaults at the Contractor's expense and risk, upon first request. Any additional costs such as for disassembly, transport and reassembly will also be borne by the Contractor. After mutual consultation, the Client will determine in all reasonability how and within what period the correction and/or repair the Defects and/or shortcomings must be made. The repair work will be carried out either at the place of delivery or elsewhere, to the reasonable choice of the Client.
- 14.3 When replacement or improvement of products and/or services referred to in 14.2 is not possible to the reasonable discretion of the Client or the Contractor did not comply with the request referred to in 14.2 within the period specified by the Client, the Contractor shall be held to refund each of the amounts received from the Client to the Client, without the Contractor having the right to set these amounts off against any amount outstanding or claimed by him from the Client. The Client may in that case take the necessary steps and to charge the Contractor for the associated costs, including the additional expenditure which the Client reasonably incur to obtain replacement Products and/or Services.

#### 15. Transfer of ownership and risk; Right of lien

- 15.1 The Client obtains the ownership of ordered Products at the time that this, as being intended for the Client, are set apart by or on behalf of the Contractor, at least in each case at the time of actual delivery. The Contractor shall bear the risk of damage to or loss of ordered Products up to acceptance thereof in accordance with article 14.
- 15.2 By way of derogation from the stipulations in paragraph 1, in the case referred to in article 9.2, the Client obtains ownership of the ordered Products at the time these are stored on its behalf.
- 15.3 If notwithstanding the provisions of article 6.3, full or partial payment of finished Products not yet ready at an earlier time than stated there, is agreed to, based on its advance payment, without the need for a further delivery act being required, the Client obtains the ownership of all products, materials, raw materials and semi-finished products which the Contractor used for the execution of the Order or intended for that. The Contractor is held to acquire and keep separate for the benefit of the client such Products, materials, raw materials or semi-finished products, completely free of charges and rights of third parties.
- 15.4 The provisions of the last sentence of paragraph 1 shall continue to remain in full force and effect after a transfer of ownership under paragraph 2 or paragraph 3.
- 15.5 The Contractor has no right of retention or suspension right in relation to Products being ordered.

#### 16. Items made available by the Client

- 16.1 The Client remains the owner of all goods ("Goods") that are made available to the Contractor related to the Order (including models, stamps, drawings, tools or other tools). Subject to permission granted by the Client in writing, the Contractor will refrain from such actions or omission to act with respect to the Goods as a result of which the Client will lose ownership due to manufacture, accession, mingling, or by any other means. Furthermore, the Contractor shall ensure that the goods will not be taxed or encumbered by rights of third parties.
- 16.2 The Contractor has no right of lien or suspension right with respect to the Goods.
- 16.3 The Contractor shall ensure the Goods at its own expense, in favour of the Client on the usual conditions against all harm resulting from total or partial loss or damage regardless of any cause. The Client has the right to demand access to the relevant policy or policies, in which the Client should be listed as co-insured.
- 16.4 The Client retains all its rights of intellectual property (including similar rights such as know-how) on the Goods. The Contractor obtains a strictly personal, non-transferable and non-exclusive license to use the Goods for the duration of the Agreement as referred to in this article and under the resolutive condition of incomplete compliance with all legal and contractual obligations that the Contractor has to consider regarding the Client.
- 16.5 The Contractor shall return to the Goods to the Client in good condition, unless the client issues other instructions. The Contractor will make use of the Goods entirely at its own risk; The Client, subject to intent or gross negligence by it or its management staff, cannot be held liable for any adverse consequences resulting from the use of the goods by the

Contractor or third parties. The Contractor shall not use the Goods for, nor will he give permission or allow that the Goods be used by third parties or in connection with any purpose other than the correct execution of the Order.

#### 17. Liability, force majeure and indemnification

17.1 The Contractor performs the Order entirely at its own risk. All damages, both directly and indirectly and including any damages for lost profits and fines imposed on the Client by supervisory authorities, which may be suffered by the Client or by Affiliated Companies as a result of or in connection with the performance of the Agreement, will be reimbursed by the Contractor, regardless of whether that damage is caused by the Contractor itself, its staff or by other persons that may be involved by the Contractor in the implementation of the Agreement.

17.2 Under force majeure on the side of the Contractor shall in any case not be understood: lack of staff, strikes, illness of staff, delayed deliveries and/or inappropriateness of materials, raw materials or semi-finished products or services, breach or tort by suppliers or third parties engaged by the Contractor and/or liquidity or solvency problems on the part of the Contractor.

17.3 The stipulations in paragraph 1 of this article shall be deemed to be a term partly for the benefit of injured third parties as intended there. The Client shall indemnify the Contractor in respect of all claims that these third parties may impose against the Client.

17.4 The Contractor is and shall keep itself adequately insured against legal and professional liability. The Contractor is obliged - immediately after he is held liable by the Client - to cede all claims in respect of benefit(s) of insurance to the Client at the first request.

#### 18. Dissolution

18.1 If the Contractor fails to perform the Order properly or a term is exceeded in the execution of an Order or when it cannot reasonably be assumed that the Contractor will carry out the Order on time and properly, the Client shall have the right, without prejudice to its other rights, without further notice and without judicial intervention, cancel the Agreement fully or partially, by mere notification to the Contractor.

18.2 In case of (provisional) suspension of payment, bankruptcy, cessation or liquidation of the company of the Contractor or (in the case of a natural person) at his death, or in case of a legal merger of the Contractor, or if a substantial portion of the control in the Contractor changed hands, the Agreement and directly related Agreements shall be cancelled by operation of the law, unless the Client states within a reasonable period of time after being informed of the relevant fact, to want to continue with the Agreement(s) as a whole or in part. The Client is furthermore entitled to suspend (without notice) any obligations towards the Contractor from other Agreements to based on other means.

18.3 All claims which the Client may have or acquire on the Contractor in the case intended in paragraph 2, will be due and payable immediately and in full.

18.4 The facts and events that (may) result as a result of dissolution, as referred to in paragraphs 1 and 2 of this article, shall apply in accordance with article 3:84 paragraph 4 CC, and as a resolute condition (conditions) for the relevant Agreements.

18.5 Under a dissolution, or the onset of the resolute condition, the Client shall have the right to recover all payments made by it as amounts unduly paid to the Contractor. As far as there is any possibly already performed achievement by the Contractor at the time of the dissolution, not susceptible for refund and which otherwise comply to the Order, the Contractor has the right to a reimbursement on the basis of the reasonable value which the work has for the Client, set off against that which the Client has to be recovered in respect of the failure and/or the dissolution of the Contractor. As far as restitution is possible, the Client has the right to, at its discretion, either retain the achievement at a fee as stated above, or to return this to the Contractor for its account and risk, without prejudice to any exercise of the rights referred to in 14.3

18.6 If the Client is the owner of Products which it wishes to return in accordance with paragraph 4, it retains ownership thereof even after termination of the Agreement under which it acquired the Products, within the limits of article 3:92 paragraph 2 of the Dutch civil code, as security for the payment of all that it has to be recovered from the Contractor. If the Client does not own these Products, the Client obtains a lien thereupon as surety by the mere fact of the dissolution.

18.7 A dissolution as meant in paragraph 1, 2 or 4 will not result in the Client's rights as set out in articles 6.4, 6.5, 6.7, 8.3, 16, 17.2, 17.3, 18, 19, 20 and 22 ending.

#### 19. Intellectual Property Rights

19.1 The Contractor hereby grants to the Client a non-exclusive license under all its eventual intellectual property rights on the Products and/or Services, including but not limited to rights relating to patents, (user) models, brands and know-how. Under this license, the Client has the right to use the Products (including change, and to edit and repair), and the Client

also has the authority to supply the Products, whether or not as a component of other goods, or give it in use to third parties. The fee for this license is included in the price. If a further (legal) action is necessary under any legal system for the setting up and/or securement of these rights (license), the Contractor shall inform the Client thereof and always provide the Client with all the necessary cooperation.

19.2. All intellectual property rights in relation to results of Services are owned by the Client. If any further (legal) action is necessary for the setting up and/or securement thereof under any relevant legal system, the Contractor shall inform the Client and continue to provide all the necessary cooperation to the Client.

19.3 The Contractor guarantees that the Products and/or the Services do not violate the Client's rights of intellectual property or that of third parties and shall indemnify the Client and its customers in respect of any such offence, similar claims relating to know-how, including unfair competition, etc.

19.4 If such an action is filed for infringement of rights or if the possibility exists, the Contractor shall, without prejudice to the rights of the Client, including its right to terminate the Agreement, at its expense:

- Acquire the right to the use of (the relevant part of) the Products and to continue the results of the Services by the Client;
- Or replace and/or adjust the (relevant part of the) Product and/or the results of the Services;
- Or take back the (relevant part of the) Product and/or the results of the Services against payment of costs, damages and interest.

Change and/or replacement may not result in the limitation of the use of the Products or the results of the Services by the Client.

19.5 The Contractor is obliged to, at its own expense, take all measures which can contribute to the prevention of stagnation at Client and to limit the extra expenses and/or damage to be incurred by the Client.

## 20. Confidentiality

20.1 The Contractor, its personnel and third parties appointed by it in the context of the implementation of the Agreement, are required to maintain strict confidentiality with regard to any information regarding the business of the Client and/or the Products to be produced (this in the broadest sense of the word) which they should obtain related to a quote by BK Cookware, the Order and/or the Agreement or its implementation, this including the nature, the reason and the result of the work carried out by it. If this confidentiality is breached, the Contractor shall forfeit a fine of €15,000.00 per event, without prejudice to the Client's right to full compensation and the right of the Client to claim fulfilment of the confidentiality obligation. This confidentiality obligation continues until 12 months after the end of the Agreement.

## 21. Exercise of suspension, dissolution, set-off and annulment rights by the Client

21.1 If the Client on the basis of the circumstances that are known at that time and should have been reasonably known, believe to be able to exercise a legally valid suspension, dissolution, set off and/or destruction right, the Client shall not be obliged to pay the statutory interest rate, in the event it should be established later that it did not exercise the intended right(s) legally.

## 22. Applicable law, jurisdiction of the court

22.1 Dutch law is applicable to these Conditions, as well as on all Orders and agreements and all disputes that might arise there from. With regard to agreements referred to in article 6:247 paragraph 2 of the Dutch Civil Code it however expressly provides that section 3, title 5 of book 6 of the Dutch Civil Code shall not apply.

22.2 Third parties do not participate in any Agreement between the Client and the Contractor on the basis of an implicit or explicit third party beneficiary in these Conditions or the Agreement. Article 6:254 paragraph 1 CC is thus not applicable.

22.3 The applicability of:

- The Convention relating to a Uniform Law on the Formation of International Contracts for the Sale of Goods dated 01.07.1964;
  - The Convention relating to a Uniform Law on the International Sale of goods dated 01.07.1964;
  - All (uniform) legislation on the basis of these treaties in any country; and
  - The Vienna Sales Convention 1980 (CISG);
- is expressly excluded.

22.4 If these Conditions apply in an international relationship with the Contractor, he will immediately inform the Client of all provisions in these Conditions which are not enforceable in the country of the Contractor. If approved in advance by the Client, the Client shall in that case carry the reasonable costs of any required external legal inquiry. The Contractor shall, in so far as he doesn't comply with the first sentence of this paragraph, not call on the possible non-enforceability of such provisions in or out of court and safeguard the Client against any damages that may arise, unless the Client has refused to comply with the reasonable costs referred to above.

22.5 In so far as it is not otherwise required by applicable national or international law, all disputes between the parties will in the first instance be submitted to the competent court in the Hague, without prejudice to the Client's right to submit the dispute with the competent court on the basis of national or international rules of law instead.

## **B. PROVISIONS RELATED TO CONTRACTING OF WORK**

This section contains specific provisions for the acceptance of work to be carried out by the Contractor, commissioned by the Client. As far as the requirements of this section are contradictory, this has priority over the other provisions in these Conditions.

### 23. Commencement of activities

23.1 Without prejudice to article 3, the Contractor who starts working, without having received a written and obligatory Order from the Client, shall do this at his own risk and expense. The Client shall not be held liable for any compensation in this regard and shall be entitled to demand that the Contractor returns everything back to its original state.

23.2 Contractor shall always inform itself (already before acceptance of the Order, or before the beginning of the work) sufficiently of the objectives of the Client in connection with the Work and the relevant organization of the Client.

23.3 In case of (alleged) errors in or discrepancies between parts of the Agreement, the Contractor shall, before proceeding to start with the implementation, consult with the Client.

### 24. Non-notification and non-award

24.1 Except if it is known that mandatory reporting of intended quotes or offers to the price regulating body with whom the Contractor is registered is not in breach of competition law, the Contractor shall not submit such a report.

24.2 If the Work is not awarded, the relevant drawings and documents provided by or on behalf of the Client shall immediately be returned to the Client after notice of non-award.

### 25. Implementation schedule: reporting

25.1 If the Client should require this, the Contractor shall submit an implementation schedule, inter alia including the dates of commencement and completion of the subsequent portions of the Work and the workforce. This implementation schedule, after obtaining the consent of the Client, shall form part of the Agreement.

25.2 The Contractor has to report to the Client periodically and according to the wishes of the Client. In this reporting, the Client shall be kept informed of the status and progress of the Work and of all aspects related to this.

### 26. Supervision and inspection

26.1 The responsibility of the daily management and supervision in the implementation of the Work is that of the Contractor. The number of licensed and competent supervisory officers, that the Contractor has available for this purpose, should be consistent with the size and complexity of the Work, the Specifications and the other reasonable requirements that the Client may impose.

26.2 The client may require of the Contractor to replace persons involved in the implementation of the Work, should the Client, for whatever reason, deems this reasonably necessary.

26.3 The Client is entitled to exercise control on compliance with the Agreement. The Client's supervision shall not relieve the Contractor of any responsibility and/or liability, neither as a whole or in part.

### 27. Handover

27.1 Unless otherwise provided for in the Agreement, the delivery ("Delivery"), shall be deemed to have occurred when the Client has declared itself in agreement with the performed Work. The agreement by the Client may only be proven by means of a written proof of Delivery, unless the Client expressly declares in writing to deviate from that for a particular Agreement or kind of Agreements.

27.2 Up to the Delivery, the work remains to be for the risk of the Contractor. Until the Delivery, the Contractor shall be held to bear the cost of replacement or repair when the Work may be lost or damaged due to any cause.

27.3 If an overall performance or final test has been agreed in the Agreement, the Delivery has taken place at the time that the Client declares to the Contractor in writing that he has complied with the requirements.

27.4 The Client is entitled to take the Work in use before this is completed, or a part thereof, whether completed or not. If this

commissioning requires more than can reasonably be demanded of the Contractor, the consequences will be arranged by Parties in all reasonableness. Due to the commissioning as referred to in this paragraph, the Work or that part, shall not be deemed to have been completed.

## 28. Maintenance obligations

28.1 The Contractor has a maintenance obligation towards the Client. This maintenance obligation means that the Contractor is required, at its own account and risk, for a period of one year from the day of the date of delivery of the Work, to carry out improvements, repairs or renewals or the necessary additional work on imperfections notified in due course or to carry out additional work with the supply of additional materials.

28.2 A similar maintenance obligation as that which is intended by paragraph 1 rests on the Contractor due to those imperfections, which during the period referred to in paragraph 1 could not reasonably be noticed by the Client, and which, for a reasonable period after discovery, are to be brought to the attention of the Contractor by the Client.

## 29. Materials

29.1 Unless provided otherwise in the Agreement, all materials required by the Contractor, are purchased and distributed on its behalf. The Contractor shall transfer ownership of the materials to the Client by the mere fact of the delivery to the Client's premises.

29.2 Where, contrary to the stipulations under paragraph 1, the Agreement provides that materials will not be purchased by the Contractor but by the Client, the Contractor has right to the provision of such quantities as reasonably required for the performance of the Work. The Contractor is responsible for the most economical use of the materials placed at his disposal by the Client, which remain the property of the Client. The Contractor shall make the remains of the materials made available by the Client, available to the Client again.

29.3 If it should become clear before or during the execution of the Work, that there is an insufficient quantity or quality of any of the material made available by the Client for the execution of the work, this needs to be brought to the attention of the Client in a timely manner. If the Contractor remains in default in this regard, any stagnation in the implementation of the work shall be blamed on the Contractor and this stagnation shall be deemed an accountable shortcoming of the Contractor. If a shortage of material is the result of careless use by the Contractor, his personnel or third parties engaged by him, then the cost of supplementing this shall be for his account.

29.4 Materials to be delivered by the Contractor must comply with all reasonable requirements imposed by the Client and comply with the Specifications. Inspection by or on behalf of the Client of deliverables by the Contractor, shall not relieve the Contractor of any responsibility and/or liability arising out of the use thereof for the Work.

29.5 Without prejudice to the other paragraphs of this article, the materials supplied by the contractor, as well as put at his disposal by the Client, whether the materials were already processed in the Work are or not until the Handover of the Work, are for the risk of the Contractor. At a loss or damage thereof, no matter how it was caused, the Contractor shall be held to carry the cost of replacement or repair.

## 30. Equipment and material

30.1 Unless provided otherwise in the Agreement, the Contractor shall be responsible for all tools and equipment necessary for the Work. If the Agreement provides that the Client shall put tools at the disposal of the Contractor, these shall be requested by the Contractor, according to the rules set out by the Client, from the Client in good time, for the period agreed to, and made available on loan to the Contractor by the Client. Subject to the earlier termination of the loan, which the Client is free to do, this shall be returned to the Client at the completion of the Work. The Contractor shall be deemed to have received the tools made available to him by the Client in good condition, unless the Contractor, at the immediate inspection, informs the Client in writing of any defects. The return shall take place in accordance with rules to be determined by the Client. At the interim termination of the loan, no compensation or additional cost, in whatever form, shall be due by the Client.

30.2 All tools and equipment of the Contractor may only be used in accordance with the applicable legal provisions, and in accordance with any additional reasonable requirements imposed by the Client. If those requirements are not met, or in cases of doubt, the Client shall be entitled to prohibit its use and the Contractor is held to remove the appropriate tools or equipment and replace it as soon as possible with tools or equipment that do comply with those requirements. Any stagnation in the implementation of the Work shall be for the account of the Contractor. Inspection of tools and equipment by the Client shall not relieve the Contractor of any responsibility and/or liability arising out of the use thereof.

30.3 Except in cases of intent or gross negligence of the Client or its administrative staff, the Client shall not be held liable for any defects in material or tools made available by it, or for any harm resulting from the use thereof by the Contractor.

### 31. Labour conditions and safety

- 31.1 The Contractor is responsible for the working conditions and safety at work. The Contractor shall comply with all applicable legal requirements, requirements of the Labour Inspectorate and the locally applicable safety regulations.
- 31.2 The Contractor shall regularly perform a safety inspection at work, depending on the project. Results of the inspection should be handed over to the Client in a report.
- 31.3 The Contractor should periodically take part in discussions on the safety of the Work, depending on the project.
- 31.4 Staff of the Contractor, staff of its subcontractors, or third parties otherwise engaged by him, who behave unsafely to the reasonable discretion of the Client, will be removed from the Work at the first notice of the Client. The Contractor shall replace them without delay.

### 32. Laws and regulations

- 32.1 If the Contractor is a subcontractor of the Client, he shall be deemed to be familiar with all legal and contractual regulations and other - also contractual - terms and conditions, which the Contractor should comply with and observe under the Contract Agreement entered into by him in the performance of the Work, of which the Work specified in the Agreement forms part.
- 32.2 The Contractor, his personnel and third parties engaged by him are required to take into account all the provisions, terms and conditions, including the above, as far as related to the work to be performed by him.
- 32.3 The Contractor undertakes to meet its legal obligation towards the Client towards payment of its social insurance premium as well as payroll taxes, related to the Work assigned to it, accurately and also to strictly comply with the applicable collective bargaining provisions.

### 33. Chain liability

- 33.1 Contractor shall keep such records, that the actual wage costs per project (prefab, assembly, overheads and any subcontracting to which the chain liability Law applies). The Client has the right to check this administration at all times.
- 33.2 The Contractor shall state the actual wage costs as mentioned in paragraph 1 on his invoice. Forty percent of this actual wage bill shall be paid into the Contractor's G-account by the Client. This amount deposited on the G-account is intended for income tax and social charges.
- 33.3 On request, the Contractor should provide the Client with the original of a recent (not older than three months) Statement on Payment Behaviour of the Business Association and Tax Authorities in respect of the Contractor's staff, as well as by the Contractor in relation to third parties assigned to (the implementation of) the Work, payment of taxes and social contributions.

### 34. Right to intervene in the work

- 34.1 If the Work, in the opinion of the Client, proceeds so that the time determined in the Agreement for the construction of the Work, or of portions of the Work, will based on reasonable expectations be exceeded, or if the Contractor, to the Client's reasonable judgement, will not or did not complete the Work according to the provisions of the Agreement and/or according to requirements of good craftsman, the Client shall inform the Contractor of this fact in writing.
- 34.2 If the Contractor doesn't take such measures within two weeks after receipt of a notice as referred to in paragraph 1, while informing the Client of such measures, that, in the reasonable discretion of the Client, the delay in time will be caught up within a short period, respectively the above provisions and/or requirements will be met, the Contractor shall be deemed to be in default.
- 34.3 If the Contractor is in default within the meaning of paragraph 2, the Client has the right, without any further notice of default or judicial intervention being required, to intervene in the Work, in order to speed up or to improve the Work, either by its own staff or by third parties assigned by him. The Client will immediately communicate this intervention to the Contractor. The Contractor will then fully cooperate with the Client and any third parties involved in the Work, including the right, if desired, of using the Contractors materials, tools, equipment etc. The cost of this intervention, which are repayable immediately, will be borne by the Contractor. The price shall included a reasonable fee to cover the overheads and supervision of the Client.

### 35. Dissolution Agreement

- 35.1 In the case referred to in article 34.2, the Client shall also be entitled to terminate the Agreement, at its discretion, completely or in part, without the need for any notice being required. This dissolution can also still take place after the Client initially sought to speed up or to improve the Work by means of intervention in the Work, as referred to in article.

The aforementioned dissolution by the Client shall be made in writing.

### 36. Transfer of work at dissolution of Agreement

36.1 When the Agreement is dissolved based on one of the reason intended in article 35 or article 18.2., the Client shall, if the previously executed part of the Work is carried out in such a way that the Work can be completed in building upon the executed part, in a technically and economically responsible way, whether or not after changes, according to the provisions of the Agreement, reimburse the Contractor for the costs incurred by him up to the time of dissolution on the basis of cost in so far as this results from the reasonable implementation of the Work. If a contract sum was agreed in the Agreement, the costs thus calculated shall not exceed a proportionately divided part of the contract price. In setting the fee, any reasonable costs of any modification as referred to, shall be deducted. The Client is entitled to deduct the intended cost of change provisionally according to an estimated amount, to be set off further with the actual cost of change.

36.2 The Client will, in the case referred to in paragraph 1, be entitled to complete the Work or to have this finished by commissioned third parties. The Contractor will then still provide the Client and the third party involved with all the required cooperation, including the right to make use of Contractors' materials, tools, equipment etc if necessary. As far as the costs incurred due to the referred cooperation are not included in the compensation referred to in paragraph 1, the cost will be reimbursed to the Contractor. As far as the payment already made to the Contractor under the Agreement by the Client, exceeds the fee referred to in this article, the surplus shall immediately be due and payable at the dissolution of the Agreement and be reimbursed by the Contractor to the Client.

### 37. Refusal of work at dissolution of Agreement

37.1 When the Agreement is terminated based on one of the reasons referred to in article 35 or article 18 paragraph 2, if the previously executed part of the Work was carried out in such a way that it is not possible to continue based on the executed part, and the Work cannot reasonably be completed in a technically and economically sound manner, whether or not after changes, according to the provisions of the Agreement, the Client can refuse the Work and can order the Work to be removed as soon as possible, accountable to the Contractor.

37.2 In case of refusal referred to in paragraph 1, The Client shall not be liable to pay any fee and any amount already paid under the agreement by the Client shall immediately be due and payable and refunded by the Contractor to the Client.

### 38. Payment

38.1 Unless agreed otherwise and without prejudice to the provisions of article 6, the contract price shall be invoiced as follows:

- 5% when entering into the Agreement;
- 20% at the commencement of the Work;
- 75% at the Handover of the Work

These General Terms and Conditions were deposited at the Chamber of Commerce in 's-Gravenhage and will be sent to him free of charge on the Contractor's first request.